"HOW COME I CANNOT FLY A DRONE ABOVE THE PRIME MINISTER'S OFFICE?" – CRIMINAL AND CIVIL LIABILITY OF A DRONE OPERATOR IN POLAND

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1. INTRODUCTION[1]

Opening of the European market for drones/remotely piloted aircraft systems (RPAS) – or the civilian use of drones – is an important step towards the aviation market of the future.[2]

By 2050, a number of different aircraft categories are expected to be operating, diverse in size, performance and type, with some still having a pilot on board, but many remotely piloted or fully automated.[3]

As part of the "Żwirko i Wigura" programme implemented by the Polish Development Fund (PFR), part of the sky over Poland will be opened for testing new drone applications. The plan assumes the launch of what is called a sandbox, i.e. a separated part of the airspace, in which the current quite restrictive UAV

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2 See more in: European Commission, Communication from the Commission to the European Parliament and the Council: *A new era for aviation. Opening the aviation market to the civil use of remotely piloted aircraft systems in a safe and sustainable manner*, Brussels, 8 April 2014, COM/2014/0207 final.

3 European Commission, *Flightpath 2050: Europe's Vision for Aviation*, Report of the High Level Group on Aviation Research, Brussels 2011, p. 28.

(unmanned aerial vehicle) regulations would not allow such an operation, and the sandbox would make it possible to operate drones in natural conditions.[4]

In Poland, the Central European Drone Demonstrator (CEDD) has also been established. An agreement for the creation of a development and testing zone for drones in the Metropolitan Association of Upper Silesia and Dąbrowa Basin (Górnośląsko-Zagłębiowska Metropolia, GZM) was signed on 26 September in Katowice, southern Poland. The signatories of the document are the local GZM authorities, the Civil Aviation Authority (ULC) and the Polish Air Navigation Services Agency (PAŻP).[5] The undertaking involves a testing centre on a defined geographical area for all drone systems and applications by different technological entities.

The Polish drone sector in 2015 was valued at about PLN 165 million and today it is worth over PLN 250 million.

A new EU regulation on RPAS will enter into force in the coming months. The legislative process aimed at the extension of the EU competence to include safety regulations in this area is ongoing. On 11 September 2018, the revised Basic Regulation[6] entered into force. This might facilitate the traffic of drone operators within the EU.[7] These regulations will define the principles of flight, training, certification, registration, etc.[8] However, the question of liability still remains beyond its scope. Therefore, the national regulations would be applicable.

The goal of the article is to show the importance of the knowledge on regulations concerning drones since those systems are available to anyone nowadays. A drone bought in a supermarket can fly in the range of 5–7 kilometres and at the altitude of a few hundred metres. The operator of such a drone needs to know the operational rules, especially when using it in a city or close to an airport. By causing damage, the operator can be held liable under both criminal and civil law.

Unfortunately, there are more and more incidents in Poland with drones, both intentional and unintentional. For example, on 20 July 2015 a Lufthansa Embraer

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[4] See more at: https://www.pfr.pl/pl/aktualnosci/pfr-o-programie-zwirko-i-wigura [accessed on 05/10/2018].

[5] http://www.pansa.pl/?lang=_pl&opis=wiecej&id_wyslane=1337.

[6] Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212 of 22.8.2018.

[7] See more at: http://www.ulc.gov.pl/pl/publikacje/wiadomosci/4443-informacje-na-temat-nowych-unijnych-przepisow-dotyczacych-bezzalogowych-statkow-powietrznych [accessed on 27/09/2018].

[8] For the comparison of the national regulations on drones in the EU and other countries, see B.I. Scott (ed.), *The Law of Unmanned Aircraft Systems. An Introduction to the Current and Future Regulation under National, Regional and International Law,* Kluwer Law International BV, the Netherlands 2016. See also T.T. Takahashi, *Drones in the national airspace*, Journal of Air Law and Commerce Vol. 77, No. 3, 2012; and B. Kapnik, *Unmanned but accelerating: Navigating the regulatory and privacy challenges of introducing unmanned aircraft into the national airspace system*, Journal of Air Law and Commerce Vol. 77, No. 2, 2012.

ERJ-195 performing flight LH-1614 from Munich to Warsaw with 108 passengers and five members of crew, was on its final approach to Warsaw's runway when the crew reported in a quite aggravated and shocked tone that they had just had a near collision with a drone. The drone passed in about a 20- to 40-metre distance.

The goal of this paper is to identify regulations in place concerning criminal and civil liability in the discussed area. The article will also present an overview of the operational regulations in Poland before introducing the unified EU law.

2. POLISH AVIATION LAW

Polish air transportation has a long tradition that goes back to the early 1920s. In 1922, the world's first regular air routes: Warsaw–Lwów[9] and Warsaw–Gdańsk were launched by the Polish airlines. An even earlier, ad hoc service, connecting Warsaw with Paris, via Prague and Strasbourg, "testifying to cordial Franco-Polish relations", was of a rather symbolic nature, due to the problem of flying over the German territory.[10] In 1929, LOT Polish Airlines was established which is now considered a leader among the Central and Eastern European airlines. LOT started to fly over the Atlantic in 1938 and projected launching of a regular transatlantic service scheduled to start in 1940.[11]

In 1928, President of Poland enacted the Ordinance on Air Law which was one of the first in the world. Taking into consideration technical developments of the air industry and the socio-economic changes which took place in Poland, in 1962 the Parliament adopted a new Act on Air Law, and in 2002 a new Act: Aviation Law, which is now in force.

3. POLISH REGULATIONS CONCERNING DRONES

The Act of 3 July 2002: Aviation Law[12] in its Article 126 para. 1 states that unmanned aerial vehicles may be operated in the Polish airspace. According to Article 126 para. 2, unmanned aerial vehicles must be equipped with the same flight, navigation and communication facilities as either a manned aircraft performing a flight in line with visual flight rules (VFR) or instrument flight rules (IFR) within a defined class of airspace. The derogations applicable to manned aircraft in this respect apply uniformly to UAVs. Under the regulations, unmanned flights are allowed, provided that certain requirements for the equipment and the qualifications of flight crew

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[9] Until 1939, the city of Lwów was a part of Poland. Since then, the spelling of its name has changed to Lvov, currently Lviv.

[10] R. Stefanowski, *50th Anniversary of LOT Polish Airlines*, 1979-1-18, RAD Background Report/11.

[11] A. Konert, *Air carrier liability under Polish Air Law*, Indian Journal of International Law Vol. 50, No. 2, 2010.

[12] Journal of Laws [Dz.U.] of 2002, No. 130, item 1112, as amended; hereinafter: Aviation Law.

are met. Pursuant to the Act, the detailed conditions and rules for the operation of unmanned flights have been specified in the relevant regulations.

The Regulation of the Minister of Transport, Construction and Maritime Economy of 26 March 2013 on the exclusion of certain provisions of the Aviation Law as non-applicable to certain types of aircraft and defining conditions and requirements for the use of these aircraft[13] was the very first attempt to introduce general requirements for unmanned aircraft operations and it was one of the first such regulations in Europe.

This Regulation stipulates detailed flight rules, the operator's responsibility, etc., but it does not provide for the liability.

It is worth mentioning that currently in Poland the visual line of sight (VLOS) operations could be conducted in non-segregated airspace. Beyond visual line of sight (BVLOS), operations require segregated airspace. Due to the large number of segregated areas in Flight Information Region EPWW, it might be inconvenient to create more, because each additional zone may limit access to the desirable uncontrolled airspace for general aviation.[14]

In order to address that issue, the Civil Aviation Authority of the Republic of Poland has published the draft amending the above-mentioned Regulation for public consultation.

The purpose of the amendment is to introduce changes to the regulations governing the BVLOS operations. The dynamically developing market and unmanned aviation industry have revealed significant limitations, which result in the need to separate airspace for BVLOS operations. The amendment will significantly simplify the procedure by establishing special categories of BVLOS operations based on risk analysis and up to 120 metres AGL[15].

4. OPERATOR'S RESPONSIBILITIES

According to the 2016 Regulation, an unmanned aircraft (it is an aircraft with a take--off mass of not more than 150 kg, used only in operations within the visual line of sight for non-recreational or sport purposes) flight shall be performed only with the assurance that in each flight phase a safe horizontal distance from persons, property, vehicles, construction works or other airspace users not available or under the operator's control is maintained in the event of a failure or loss of control of the unmanned aircraft. On the other hand, model aircraft (it is an aircraft with a take-off mass of not more than 150 kg, used only in operations within the visual line of sight for recreation or sport purposes) operations shall be performed only while maintaining a horizontal

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[13] Amended by the Regulation of the Minister of Infrastructure and Construction of 8 August 2016 amending the regulation on the exclusion of certain provisions of the Aviation Law as non-applicable to certain types of aircraft and defining conditions and requirements for the use of these aircraft, Journal of Laws [Dz.U.] of 2016, item 1317; hereinafter: 2016 Regulation.

[14] M. Włodarczyk, *Drony – najmłodsi użytkownicy przestrzeni powietrznej*, SMS Biuletyn Bezpieczeństwa PAŻP No. 2, 2017, p. 13.

[15] Above ground level.

distance of not less than 100 metres from the boundaries of buildings, towns, settlements or gatherings of people in the open air and maintaining a horizontal distance of not less than 30 metres from persons, vehicles, construction objects not available or under the operator's control. However, the rules concerning the distance from people and buildings do not apply to the model aircraft with weight of less than 0.6 kg.

The model aircraft operator and the unmanned aircraft operator must operate:

- taking into account the meteorological conditions, structure and classification of airspace and information on restrictions in air traffic;
- in the CTR zone on terms specified by the air traffic service provider;[16]
- in the ATZ zone with the consent of the manager of the zone and on the terms specified by him;
- in the dangerous zone, MCTR[17] or MATZ[18] zone with the consent of the manager of a given zone and on conditions defined by him;
- in the restricted zone covering National Parks only with the consent of the manager of a given National Park and under conditions specified by him;
- in the prohibited zone only with the consent of the manager of a facility covered by the zone and under the conditions defined by him;
- in the ADIZ[19] zone after informing the air traffic service (ATS) unit responsible for the space in which the flight is to be performed, or AMC Poland, about the location and time of flights;
- in the case of flights in construction works, with the consent of the facility's manager and in accordance with safety rules agreed with him.

The obligation to report the flights to the ATS[20] provider in the CTR and ATZ zones does not apply to flights operated by unmanned aircraft/model aircraft with take-off mass not exceeding 25 kg at a distance of more than 6 kilometres from the airport boundary and up to a height of 100 metres above the ground. For flights in the CTR zone that do not meet the above requirements the notification to the air traffic services provider (Polish Air Navigation Services Agency) is necessary.[21]

The operator of the model aircraft must:

1) exercise due caution,[22] avoid any act or omission that could:
   a. create a safety risk, including the threat to air traffic safety,
   b. obstruct air traffic,
   c. disrupt peace or public order, and
   d. expose anyone to damage.

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[16] The detailed flight rules to be met in order to fly in CTRs are described at the Polish Air Navigation Services Agency website: http://www.pansa.pl/index.php?menu_lewe=ops&lang=_pl&opis=OPS/ops_rpa [accessed on 27/09/2018].

[17] Military Control Zone.

[18] Military Aerodrome Traffic Zone.

[19] Air Defence Identification Zone.

[20] Air Traffic Services.

[21] See the detailed rules at: http://www.pansa.pl/index.php?menu_lewe=ops&lang=_pl&opis=OPS/ops_rpa.

[22] According to Article 2 para. 14, due caution means caution consisting in increased attention, adjusting the operator's behaviour or securing and adapting the take-off and landing site of the model aircraft or terrain over which the flight takes place to the conditions and situations that change during the flight as necessary to enable a safe flight.

2) control the flying model so that it avoids collision with other aircraft;
3) ensure that the flying model he operates gives priority to manned aircraft;
4) be responsible for the decision to perform the flight and its correctness, and the appointment and participation of the observer in the performance of flights does not release him from the responsibility for the safety of performed operations;
5) use the flying model and control devices in accordance with the manufacturer's recommendations and restrictions, if published;
6) check the technical condition of the model aircraft before the flight;
7) perform flights only with a model aircraft that is technically efficient.

5. CRIMINAL LIABILITY

There are no special regulations on drones regarding criminal liability. However, one can find criminal provisions in the Aviation Law and the Criminal Code which could apply to a drone operator as well. First of all, a drone user can violate the air traffic regulations. In such a case, Articles 211 and 212 Aviation Law apply.

Article 211 provides for several offences related to performing flights with aircraft in violation of the provisions of the Act, and among others stipulates that: anyone who operates a flight using an aircraft incompliant with the required airworthiness or with the restrictions specified in the airworthiness certificate, anyone who performs a flight against the obligations regarding the conditions of use of the aircraft in the Republic of Poland or anyone who, despite the ban on the emission of a laser beam or light from other sources in the airspace areas, emits or causes the laser beam or light from other sources to be emitted in the direction of the aircraft in a way that may cause glare and consequently create a safety hazard to the aircraft or the health of the crew and passengers on board, is subject to a fine, limitation of liberty or imprisonment for up to one year. The same punishment is imposed on a person who, not fulfilling his duty, allows such acts to be committed.[23] An example of the infringement of this Article is a situation when a person with a VLOS flight licence performs a BVLOS flight or when a person with outdated aeromedical examinations flies a drone, a person operating a drone is under the influence of alcohol or drugs, a person performs acrobatics with a drone over a residential area or a group of people, etc.

Article 212 provides for several offences violating the provisions of the Act in the field of air traffic and, among others, states that: anyone who, when performing a flight with an aircraft, violates air traffic regulations in force in the area in which the flight takes place or crosses the state border without the required permit or in violation of the permit conditions, or anyone who, contrary to the provisions of the Act, uses signs and signals in traffic that are unrelated to this movement or in a way that could be misleading to air traffic service units or aircraft crew, is punishable by imprisonment of up to five years. The same punishment is imposed on a person

[23] See the commentary on Article 211 in M. Żylicz (ed.), *Prawo lotnicze. Komentarz*, Warsaw 2016.

who, not fulfilling his duty, allows such acts to be committed. If the perpetrator acts unintentionally, he is subject to a fine, limitation of liberty or imprisonment for up to one year.[24] An example of the infringement of this Article is a situation when a person flies a drone in the CTR zone (for accuracy at a distance of, e.g. 2 km from the airport) and has not informed the relevant services (ASM 1 and TWR) about the intention to perform the operation, and has not obtained proper flight conditions approval. Another example is when a person uses a drone to smuggle goods across the state border or a person uses a drone in the restricted area above a National Park without the consent of its authorities.

There are also provisions in the Criminal Code (henceforth: CC) that could apply to a drone user. First of all, responsibility for causing a disaster in air traffic could be involved. Pursuant to Article 173 CC, anyone who causes a disaster on land or water or to air traffic, and thereby endangers the life or health of many people, or property to a significant degree is liable to imprisonment for between one and ten years. If this act results in the a person's death or in grievous bodily harm to many people, the offender is liable to imprisonment for between two and twelve years. If the offender acts unintentionally, he is liable to imprisonment for between three months and five years. If this unintentional act results in the death of a person or in grievous bodily harm to many people, the offender is liable to imprisonment for between six months and eight years. According to Article 174 CC, anyone who causes an immediate danger of a disaster on land or water or to air traffic is liable to imprisonment for between six months and eight years. If the offender acts unintentionally, he is liable to imprisonment for up to three years.

Moreover, anyone who causes grievous bodily harm in the form that: deprives a person of his or her sight, hearing, speech or the ability to procreate, or inflicts on another person a serious crippling injury, an incurable or prolonged illness, a potentially fatal illness, a permanent mental illness, a permanent total or significant incapacity to perform a profession, or a permanent serious bodily disfigurement or deformation, is liable to imprisonment for between one and ten years. If the offender acts unintentionally, he is liable to imprisonment for up to three years. If this act results in a person's death, the offender is liable to imprisonment for between two and twelve years (Article 156 CC). Anyone who causes a bodily injury or an impairment to health other than those specified in Article 156 §1 is liable to imprisonment for between three months and five years. Anyone who causes a bodily injury or an impairment to health lasting up to seven days is liable to a fine, the limitation of liberty or imprisonment for up to two years. If the offender acts unintentionally, he is liable to a fine, the limitation of liberty or imprisonment for up to one year (Article 157 CC).

Furthermore, anyone who, through the persistent harassment of another person or another person's next of kin, creates a justified sense of danger or significantly violates the person's privacy, is subject to imprisonment for up to three years. Anyone who pretends to be another person and uses his or her image or other

[24] *Ibid*., see the commentary on Article 212.

personal data in order to cause property or personal damage is liable to the same penalty (Article 190a CC).

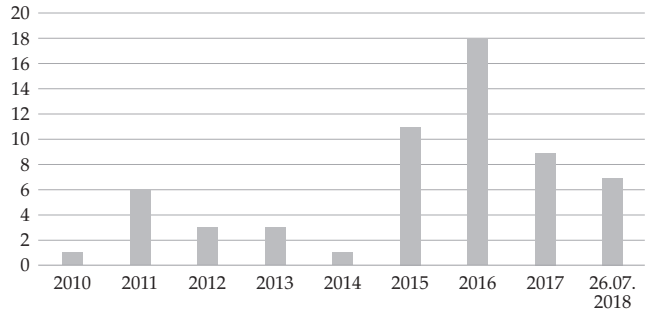
Finally, there is a risk for a domestic trespass. Anyone who forces his way into another person's house, apartment, premises, quarters, or a fenced plot of land, or does not leave such a place, despite the demand from an authorised person, is liable to a fine, the limitation of liberty or imprisonment for up to one year (Article 193 CC).[25]

In order to promote safety and to inform about legal consequences of reckless use of drones, the Civil Aviation Authority of the Republic of Poland and the Polish Air Navigation Services Agency have prepared several safety information campaigns, among others, the "Fly Wisely, Be Safe" campaign[26].

Unfortunately, neither information campaigns nor the most perfect regulations will protect against threats that may be caused by the presence of a drone in a place not intended for it. The appearance of unreported unmanned aircraft in the controlled space is the issue identified worldwide affecting aviation safety. From time to time, the media comment on events related to filming a large passenger aircraft from a close distance, and the interruption of an approach to the international airport due to the identification of a drone. Those incidents often disturb air traffic and cause the closure of the airport for some time. Poland is not an exception, and every year there are drone-related occurrences reported as part of the PAŻP's safety management system. Although the events involving the presence of drones have not led to an accident and caused some necessary actions by the air traffic controllers and flight crew, it should be remembered that the unreported drone can potentially affect air traffic and safety of passengers and flight crew.

The number of occurrences related to UAVs is illustrated in the chart below.[27]

Number of reported air occurrences concerning drones in FIR EPWW



Source: 2018 Bi-Annual Safety Report for Flight Information Region EPWW

[25] For more, see M. Żylicz (ed.), *Prawo lotnicze*…

[26] http://latajzglowa.pl or http://www.ulc.gov.pl/pl/publikacje/wiadomosci/4289-lataj-bezpiecznie-lataj-z-glowa-rusza-spot-edukacyjny-o-dronach [accessed on 27/09/2018].

[27] See: 2018 Bi-Annual Safety Report for Flight Information Region EPWW.

After a near-collision between Lufthansa's plane and a drone in 2015, the Police immediately responded and dispatched a helicopter as well as ground forces to search for the drone operator, but was unsuccessful at first in locating him or the drone. Continued investigation resulted in identification of the operator: a 39-year-old resident of Piaseczno, located underneath the approach path runway 33 spanning from about 3 to 6.5 NM from the threshold runway 33. The drone user admitted to having flown his drone in the area on 20 July 2015 and faced charges of endangering aviation safety that could send him to prison for up to eight years.

On 26 September 2016, a Russian citizen operated a drone over the Prime Minister's Office, Belvedere (Residence of the President of the Republic of Poland) and the Ministry of National Defence in Warsaw. According to information provided by the media, the man was handed over to the Warsaw Police. The District Prosecutor's Office in Warsaw passed the investigation to the Internal Security Agency. Investigators were at that point trying to determine the purpose of the flight and what information was collected by the drone.[28] The Russian drone operator was arrested. The Prosecutor's Office presented him with allegations of violation of aviation law, and the Internal Security Agency applied to the Border Guard for expulsion from Poland. Apparently, he was surprised to hear that he could not fly a drone over the government buildings, the Belvedere and other important headquarters of national institutions.

The most important governmental institutions are situated in the specific part of Warsaw where the Flight Restricted Area (ROL48) has been designated. An operator flying illegally in this area can face the charges of five-year imprisonment[29] or, if he acts unintentionally, is subject to a fine, limitation of liberty or imprisonment for up to one year.[30]

One could state that the penalty for such an act might be too severe and law seems strict in this respect. However, it is possible to fly legally in this area.

To operate a flight in the ROL48 Flight Restricted Area, the approval of the State Security Office (former Government Protection Bureau) is needed. The Office is a Polish equivalent of the United States Secret Service, providing antiterrorism services and VIP security services for the Polish government. To obtain formal approval from the Office to conduct an RPA flight in ROL48, the operator should send the application form at least five days prior to the flight. The Office then can remove restrictions for a specific flight or refuse to do so due to national

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[28] https://www.defence24.pl/dron-nad-kancelaria-premiera-zatrzymano-operatora-obywatela-rosji [accessed on 08/10/2018].

[29] Article 212 para. 1(1) Aviation Law:

Who, performing a flight using an aircraft:

a) violates the air traffic regulations in force in area in which the flight is taking place,
b) crosses the state border without the required permit, or in violation of the terms of the permit,
c) violates, issued on the basis of Art. 119 para. 2 of the Act, prohibitions or flight restrictions in the Polish airspace introduced due to the military necessity or public safety, (…) is subject to imprisonment of up to five years.

[30] Article 212 para. 3 Aviation Law.

security reasons. The approval of such a flight can be obtained only by the licensed Unmanned Aerial Vehicle Operator.[31]

On 17 July 2017, a CCTV operator noticed a drone flying over the Royal Castle in Warsaw and Sigismund's Column. He informed the Police about the incident. Officers detained a 29-year-old tourist from China in the area of the Castle Square. The charges were pressed on the basis of Article 212 para. 1(1) Aviation Law. As the operator claimed that he had no knowledge about the Restricted Area, the event resulted in less severe charges of a fine, limitation of liberty or imprisonment for up to one year.[32]

Reckless drone operators include not only tourists. The owner of a drone in Gniezno, a city in the Wielkopolskie Voivodship, who on 14 June was flying his drone near the Gniezno cathedral could be a subject of the criminal liability. The man did not have the permit required for the flight from the Military Air Traffic Control Tower in Powidz as the whole city is covered by the Military CTR. He could be liable for the offence under Article 212 para. 1(1) Aviation Law as well.[33] Such repercussions could have been avoided by contacting the air traffic controller of the Powidz Air Traffic Control and obtaining the approval of the flight. Similar events have taken place also in other parts of Poland, and new cases are constantly broadcasted by the media. Many of those are ongoing, yet there is one well-known instance that ended up with a court judgement. The defendant was accused that on 4 December 2017 he operated an unmanned aerial vehicle above the Belvedere and Royal Łazienki Gardens which are in the Flight Restricted Area (ROL48) and EPWA CTR (Control Zone) of the Warsaw Chopin Airport. The flight was operated without consent from the Polish Air Navigation Services Agency and the State Security Office. The court found the operator guilty of the offence he was accused of under Article 212 para. 1(1a) Aviation Law, and on this basis the court sentenced him and punished with a six-month imprisonment. Under Article 69 §1 and 2 CC and Article 70 §1 CC, the imprisonment sentence was conditionally suspended for a trial period of two years. The operator was also obliged not to fly unmanned aircraft on the territory of the Republic of Poland and to pay a fee to the State Treasury in the amount of PLN 1,000 to cover court costs. As the number of illegal flights is rising, such incidents may result in similar court judgements.

One of the interesting cases are illegal flights in the National Parks. Due to their nature and necessity to protect the environment, the Restricted Areas are established in such places. Flights in those areas are possible only upon the approval from the manager of the Restricted Area. In case of the National Parks, it is usually the Park director. The Park management is often free to impose restrictions and requirements to be met in order to obtain the approval to conduct a flight. Some Parks decide to prohibit all drone activities. In case of the Tatrzański National Park, the operator

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[31] https://sop.gov.pl/pl/o-sluzbie/loty-w-rol48/zgoda-na-loty-rol48/231,Loty-w-ROL48.html [accessed on 06/10/2018].

[32] http://warszawa.wyborcza.pl/warszawa/7,54420,22105043,latal-dronem-nad-zamkiem-krolewskim-teraz-poniesie-kare.html [accessed on 07/10/2018].

[33] http://moje-gniezno.pl/artykuly/czytaj/19916/latal-dronem-w-poblizu-katedry-grozi-mu-nawet-rok-wiezienia.html.

must file an application form, including the details on the operator and flight. What is worth pointing out, Park managers can charge fees for drone flights. In case of the Tatrzański National Park, they range between PLN 300 (EUR 70) and PLN 15,000 (EUR 3,500), depending on the flight purpose. The fees in case of flights for educational purposes are significantly lower than for commercial reasons.[34] There are known cases when the restrictions are not observed, and the Park management can impose the penalty on the operator caught by the Park Security Officer or bring a lawsuit.[35]

6. CIVIL LIABILITY

There are no special regulations for drones regarding civil liability. Therefore, the general provisions on civil liability apply. For damages caused to third parties, the general regulations for the liability of an operator of manned aircraft are applicable. Aviation Law of 2002 stipulates in Article 206 that the liability for damage caused by the aircraft operation is regulated by civil law with respect to liability for damage caused by the use of mechanical means of transport operable by the forces of nature. Thus, this Article refers to the Civil Code, and particularly to Articles 435 and 436. Article 435 §1 Civil Code establishes the rule of strict liability for injuries caused by enterprises or establishments which are set in motion by natural forces, like steam, gas, electricity, fuel. The enumeration is not exclusive and atomic energy should be included. The same liability is imposed by Article 435 §2 Civil Code on establishments manufacturing or using high explosives, for instance, mines. A person running the enterprise on his own account is liable for injury caused by the accident, unless he proves that the damage has been the result of force majeure or incurred through the exclusive fault of the person injured or of a third party. Article 436 Civil Code refers to traffic accidents caused by motor vehicles. According to this Article, the liability depends on the possession of the vehicle and not on its ownership. The result is that in the case of theft, the owner of a car ceases to be liable. There are two important exceptions to this rule. Principles of liability based on fault are applicable when persons are transported gratuitously and in the case of a collision (see Article 436 §2 Civil Code). A gratuitous guest must prove the fault of the possessor (or his servant). In the case of a collision, general principles decide how much the fault of each driver has contributed to the damage.[36]

The liability of the operator is, therefore, strict and he cannot escape it, unless he proves that the damage has been the result of force majeure or incurred through the exclusive fault of the person injured or of a third party.[37]

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[34] http://tpn.pl/kontakt/zalatw-sprawe/filmowanie.

[35] http://podhale24.pl/aktualnosci/artykul/52544/Turysci_lamia_zakaz_lotow_dronami_nad_Tatrami.html [accessed on 08/10/2018].

[36] For more, see A. Szpunar, *The law of tort in the Polish Civil Code*, The International and Comparative Law Quarterly Vol. 16, No. 1, January 1967, pp. 86–102.

[37] For more, see A. Konert, *Odpowiedzialność za szkodę na ziemi wyrządzoną ruchem statku powietrznego*, Warsaw 2014.

There is also a risk of infringement of personal rights when using a drone. Pursuant to Article 23 Civil Code, the personal interests, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive or improvement-related achievements are protected by civil law, independently of protection under other regulations. According to Article 24 Civil Code, any person whose personal interests are threatened by another person's actions may demand that the actions be ceased, unless they are not unlawful. In the case of infringement, he may also demand that the person committing the infringement perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. On the terms provided for in the Civil Code, he may also demand a pecuniary compensation or that an appropriate amount of money be paid for a specific public cause.

The use of drones can also trigger the liability for unlawful dissemination of the image. Pursuant to Article 81 of the Act on copyright and related rights, dissemination of an image requires the permission of a person depicted on it. In the absence of explicit reservation, no authorisation is required if the person has received the agreed payment for posing. The dissemination of the image does not require the permission in case of: a well-known person, if the image has been made in connection with performing public functions, in particular political, social and professional ones; a person who is only presented as a detail of a whole, such as a gathering, landscape, public event.

7. INSURANCE AND PUBLIC SAFETY

Regarding the insurance, Appendix 7 of the Regulation of the Minister of Transport, Construction and Maritime Economy of 26 March 2013 on the exclusion of certain provisions of the Aviation Law as non-applicable to certain types of aircraft and defining conditions and requirements for the use of these aircraft specifies the requirements for third-party liability insurance of people using: hang gliders, paragliders with foot take-off, parachutes and unmanned aircraft with a take-off mass of up to 20 kg. The insurance covers damage caused by the person operating the aircraft in connection with the operation of these aircraft.[38]

The third-party liability insurance of the person operating the aircraft covers damage consisting of:

1) bodily injury, health disorder or death of a third party;
2) damage to the property of a third party on the surface of the earth, water or airborne.

[38] Section 1.1 of the Regulation of the Minister of Transport, Construction and Maritime Economy of 26 March 2013 on the exclusion of certain provisions of the Aviation Law as non-applicable to certain types of aircraft and defining conditions and requirements for the use of these aircraft.

The obligation of the third-party liability insurance for a person operating aircraft arises on the day of the beginning of a flight or a jump, performed in the whole or in part of the Polish airspace.

The minimum limit of liability for third-party liability insurance of persons operating unmanned aircraft with a take-off mass from 5 to 20 kg, to the extent of damage caused to third parties in relation to one event, the effects of which are covered by the third-party liability insurance contract, is the equivalent in PLN to 3,000 SDRs.

An unmanned aerial vehicle, including a flying model, may be destroyed, immobilised or taken control over if:

1) the course of the flight or the operation of unmanned aircraft:
   a. threatens the life or health of a person,
   b. poses threat to protected objects, devices or areas,
   c. disrupts the mass event or threatens the safety of its participants,
   d. raises a reasonable suspicion that it can be used as a means of a terrorist attack;
2) unmanned aircraft performs flight in the airspace in the part in which flight restrictions have been introduced or located over the territory of the Republic of Poland, in which the flight of the aircraft is prohibited from ground level up to a specified altitude.

The above actions are authorised by the Police officers and other authorities.

8. CONCLUSIONS

It is crucial for a drone user to be aware of the existing regulations. For one flight, a drone operator can be liable based on both criminal and civil law: in terms of criminal punishment, for example for a domestic trespass, and in civil terms, for instance for violation of personal rights. The drone operator should, therefore, take all necessary measures to ensure flight safety. There are different sources from which the operator can obtain the information on flight restrictions in the area where he intends to fly a drone. It could be the website of the ANSP (air navigation service provider), in Poland: PAŻP,[39] or a dedicated application such as a drone radar.[40] Nevertheless, whatever source of information or tools the operator would use, he is solely responsible for the flight and its outcome. That is why, the proper preparation before the drone flight is crucial and mandatory in today's complex aviation and legal environment.

Unfortunately, the possibility of occurrences related to UAVs are still a fact. Although it is true that most of the incidents have not led to an accident, it should be remembered that an unreported drone can potentially affect the air traffic and safety of passengers and a flight crew. The main problem is a difficulty in identifying a drone operator. The time between the incident and the ATC notification to the

[39] http://www.pansa.pl/index.php?menu_lewe=ops&lang=_pl&opis=OPS/ops_rpa.
[40] https://droneradar.eu.

Police is usually so long that it makes it impossible to find and identify the operator. In the view of the authors of this article, it is necessary to introduce a registration of all drone operators, which would allow automatic identification of a drone user.

Some of the countries or manufacturers try to find a solution on their own. For example, DJI company's drones simply will not take off in a place where the flight is forbidden (e.g. airports or military bases) thanks to GPS communications. However, software limitations are not sufficient, because they do not prevent flights over people. Another example is Japan where airports and other sensitive points are equipped with their own drones, which are connected to a sensitive radar system. If an alien flying object appeared in the sky, then the drone-guardsman will immediately fly to it, hover over and shoot it down.[41]

Another issue is technology development pace which is faster than the lawmakers introducing new regulations. Three years ago, no one could imagine a plug-and-play consumer drone with a take-off mass less than 600 grams that could register 4K videos and fly long distances. Now such drones are available on the market in every bigger store offering electronics. The Polish regulations treat more liberally drones with the MTOM[42] of less than 600 grams.

This allows the flight to be conducted more than 1 km from the airport boundary (fencing) in the CTR zone and with the use of an unmanned aircraft and model aircraft with a take-off mass of not more than 0.6 kg and up to the altitude of 30 metres or up to the highest obstacle, including trees or buildings and other objects, within a radius of up to 100 metres from the operator. Heavier drones require the coordination with the ANSP (they are also allowed to fly higher than obstacles in line with the flight principles issued by PAŻP and in later cooperation with the ATC).

While this approach helps the market to develop and operators to operate lighter drones which will not interfere with manned aviation, the legislation is and will always be lagging behind the technological development.

The reasoning behind introducing the weight specification by the regulator might be at the time being the will to distinguish between the toy-drones and professional-use ones or to reduce harmful effects of potential incident involving drones. The first objective has already been challenged by the market, which offers smaller, lighter drones with better and better capabilities, moving the boundary between toys and professionally-used UAVs. However, the other reason may still be valid as an attempt to reduce the regulatory impact on restrictions on devices which potentially create less severe outcome of an incident due to their smaller size.

The European Commission has published the draft Commission Implementing Regulation on the rules and procedures for the operation of unmanned aircraft. The Opinion of the EASA No 01/2018: Introduction of a regulatory framework for the operation of unmanned aircraft systems in the "open" and "specific" categories[43] stated the intentions to implement an operation-centric, proportionate, risk- and

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41 See: https://www.spidersweb.pl/2015/12/dron-w-siatce.html [accessed on 05/10/2018].

42 Maximum Take-Off Mass.

43 https://www.easa.europa.eu/sites/default/files/dfu/Opinion%20No%2001-2018.pdf [accessed on 08/11/2018].

performance-based regulatory framework for all UAS operations conducted in the "open" and "specific" categories.

The draft regulation defines different classes of UAVs based not only on MTOM but also introduces the kinetic energy as the reference point. The lightest subclass is C0 which includes drones weighing less than 250 grams, and the second subclass consists of drones between 250 grams and 900 grams or with kinetic energy of less than 80J.[44] There are three more classes with different MTOM and characteristics and functionalities of the UAVs themselves. It all shows the tendency to find the "golden ratio" of drone operations among the regulators. However, it is important to point out that the approach of the states which prepared the regulations years ahead before drafting the legal solutions by the European Union deserves an approval and should be assessed as positive. Thanks to the existing rules, the market is regulated safely and it keeps the number of operators in check in the same time allowing them to fly without imposing unnecessary restrictions.

In the meantime, the pursuit of lawmakers, the technology and the imagination of drone operators will continue to develop. The finish line of this race is the full integration of unmanned and manned aviation in a safe manner. Time will show how and when the industry will achieve this goal.

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"HOW COME I CANNOT FLY A DRONE ABOVE THE PRIME MINISTER'S OFFICE?" – CRIMINAL AND CIVIL LIABILITY OF A DRONE OPERATOR IN POLAND

Summary

The developing branch of unmanned aviation is undoubtedly opening the new possibilities to aviation applications. The prospect of economic growth, technology availability, liberal regulations and decreasing costs of unmanned aerial vehicles reduce the entry threshold for more and more operators in Europe and worldwide. This trend is largely visible in Poland where the number of licensed drone operators in the third quarter of 2018 exceeded 8,500. The number of unlicensed, so-called recreational and sport users of drones, might be a few or even dozens times higher. While trained and licensed operators are most probably aware of their responsibilities and potential hazards the drone operations might create, recreational users tend to be more reluctant to fly by the book and less informed on potential liability of their actions. The new branch of long-time developed and matured aviation sector might require increased efforts of lawmakers, however, criminal and civil liability regulations concerning manned aviation can be successfully applied to unmanned aerial vehicles. The authors of this study present an overview of these regulations on the example of Polish provisions in order to confirm that the conscious use of the new technology is crucial for its further development and sustaining the liberal approach of lawmakers and other aviation users.

Keywords: aviation, aviation law, drones, drone operator

"CZEMU NIE MOŻNA LATAĆ DRONEM NAD KANCELARIĄ PREMIERA?" – ODPOWIEDZIALNOŚĆ KARNA I CYWILNA OPERATORA DORNA W POLSCE

Streszczenie

Rozwijająca się gałąź lotnictwa bezzałogowego niewątpliwie otwiera nowe możliwości dla przemysłu, nie tylko lotniczego. Wizja wzrostu gospodarczego, dostępność technologii, liberalne regulacje i malejące koszty bezzałogowych statków powietrznych przyczyniają się do coraz większej liczby operatorów w Europie i na całym świecie. Tendencja ta jest bardzo widoczna w Polsce, gdzie liczba licencjonowanych operatorów dronów w trzecim kwartale 2018 roku przekroczyła 8 500. Liczba nielicencjonowanych, tak zwanych rekreacyjnych i sportowych, użytkowników dronów może być kilka, a nawet kilkadziesiąt razy wyższa. Licencjonowani operatorzy najprawdopodobniej są świadomi swoich obowiązków i potencjalnych zagrożeń, jakie mogą stwarzać operacje BSP. Użytkownicy rekreacyjni natomiast są mniej poinformowani o potencjalnej odpowiedzialności za swoje działania. Ta nowa gałąź dojrzałego sektora lotniczego może wymagać wzmożonych wysiłków ustawodawcy, jednak przepisy dotyczące odpowiedzialności cywilnej i karnej w odniesieniu do załogowego lotnictwa mogą z powodzeniem zostać zastosowane do bezzałogowych statków powietrznych. Autorzy niniejszego opracowania przedstawiają przegląd tych regulacji na przykładzie polskich przypadków, aby potwierdzić, że świadome korzystanie z nowej technologii jest najważniejszym czynnikiem jej dalszego rozwoju.

Słowa kluczowe: lotnictwo, prawo lotnicze, drony, operator drona

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